FARAD CONSTITUTION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.556/2006

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM:- **D.D. SINHA &**
A.B. CHAUDHARI, JJ.
DATED :- 23.01.2007.

Heard Shri Z.A. Haq, learned Counsel for the petitioner, Smt. N.S. Jog, learned A.G.P. for respondent Nos.1 and 2 and Shri A.C. Dharmadhikari, learned Counsel for respondent No.5.

This writ petition is directed against the order dated 18.6.2005, passed by the Education Officer, whereby the approval to the promotional post of Senior Clerk held by the petitioner came to be refused on the ground that the promotion given to the petitioner on the post of Senior Clerk was de hors of the Rule of seniority, applicable in this regard.

Shri Haq, learned Counsel for the petitioner has contended that the petitioner was appointed as Junior Clerk on 21.1.2003 and vide order dated 16.3.2004, the petitioner was finally promoted to the post of Senior Clerk. The

management forwarded the proposal of the petitioner to the Education Officer for grant of approval. However, by the impugned communication dated 18.6.2005, the Education Officer rejected the same, and therefore, the present writ petition.

Shri Haq, learned Counsel for the petitioner has contended that it is a settled position that the post of Senior Clerk is required to be filled in by promotion from amongst the persons, who are holding the post of Junior Clerks on the basis of Rule of seniority cum merit as stipulated in Schedule B Part IV Item 2 of the Maharashtra Employees of Private School (Conditions of Service) Rules,1981. It is contended that in the instant case though it is not in dispute that one Shri Bharat Borkar – respondent No.5 is senior to petitioner in the cadre of Junior Clerk, however, that by itself does not entitle the Education Officer to conclude that the promotion given to the petitioner from the post of Junior Clerk to Senior Clerk is de hors of the above referred Rule. As per Rule, the procedure required to be considered by the management is seniority cum merit. It is contended that though respondent No.5 is senior, however, so far as the aspect of merit is concerned, the respondent No.5 is less meritorious than the petitioner, and therefore, the conclusions recorded by the Education Officer in the impugned order for refusing to grant approval to the petitioner cannot be sustained in law.

Shri Haq, learned Counsel for the petitioner further contended that the Education Officer has exceeded his jurisdiction, vested in him under Rule 12, by holding in the impugned order that respondent No.5 though senior to the petitioner was not given promotion and was transferred to primary division. It is contended that the Education Officer under Rule 12 is only entitled to adjudicate upon the inter se seniority of the petitioner and respondent No.5. However, it is not open for the Education Officer to go beyond this aspect and consider whether respondent No.5 was denied promotion or otherwise.

Shri Haq, learned Counsel for the petitioner further contended that if the management gives promotion to the petitioner in supersession of respondent No.5 and if respondent No.5 is aggrieved by the same, it is for the respondent No.5 to approach the School Tribunal under Section 9 of the M.E.P.S. Act for redressal of his grievance and the Education Officer while exercising the jurisdiction under Section 12 is not entitled to decide to whom the promotion ought to have been given by the management or not, except concluding issue of inter se seniority. In the instant case the respondent No.5 has not preferred any appeal till this date before the Tribunal and in absence thereof, the observations made by the Education Officer in this regard in the impugned order are unwarranted.

Shri Haq, learned Counsel for the petitioner alternatively contended that the petitioner shall continue to hold the post of Senior Clerk till such time the action of reversion or any other action is taken by the management, in view of the impugned order.

Smt. Jog, learned A.G.P. for respondent Nos.1 and 2 states that since the promotion given to the petitioner was in breach of the above referred procedure, therefore, the Education Officer refused to grant approval to the post of Senior Clerk held by the petitioner. It is further contended that it is not in dispute that respondent No.5 is senior to the petitioner in the cadre of Junior Clerk, and therefore, on the basis of the Rule of seniority cum merit petitioner was not eligible for grant of approval to the post of Senior Clerk. It is further contended that so far as the aspect of merit of the petitioner vis-a-vis the respondent No.5 is concerned, there are no specific averments in the petition to that effect to demonstrate as to how the petitioner is more meritorious than respondent No.5, and in absence thereof the decision of the Education Officer cannot be said to be either arbitrary or bad in law.

Shri Dharmadhikari, learned Counsel for respondent No.5 supported the order of Education Officer.

We have considered the rival contentions canvassed by the respective Counsel. Perused the impugned order

passed.

In the instant case, it is not in dispute that respondent No.5 admittedly is senior to the petitioner in the cadre of Junior Clerk. It is also not in dispute that as per procedure, for promotion the criteria is seniority cum merit. It is also not in dispute that in the instant petition there are no pleadings to demonstrate as to how the respondent No.5 was less meritorious than the petitioner. In view of these admitted facts, it is difficult to appreciate the contentions canvased by the learned Counsel for the petitioner that the Education Officer giving go-bye to the aspect of merit and only on the basis of seniority refused to grant approval to the post of Senior Clerk held by the petitioner. On the other hand since respondent No.5 is admittedly senior in the cadre of Junior Clerk, unless there are certain impediments on merit in this regard, which would disentitle respondent No.5 from consideration, in such situation alone, the contentions canvassed by the learned Counsel for the petitioner would hold water. However, in absence of any specific averment, in respect of inter se merit of the petitioner and respondent No. 5, it is difficult for us to conclude that the Education Officer has given go-bye to the aspect of merit, which is one of the criteria for grant of promotion, as per Rule applicable in this regard. In the circumstances, the petition suffers from lack of merit. With these observations we dismiss the writ petition.

Needless to mention that after the order refusing to grant approval is passed by the Education Officer, it is open for the management to take appropriate action according to law. It is well settled that primary responsibility of payment of salary is of the management.

JUDGE **JUDGE**

ssw